

CV 01-01081 #00000052

CC: TO JUDGE ~~MR~~
The Honorable Thomas S. Zilly

FILED
LODGED
ENTERED
RECEIVED
JUN 13 2002 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MUIO TRAN, KIM CUC NGUYEN, NHU
HUU TRAN, a minor child, LOAN HUU
TRAN, a minor child,

Plaintiffs,

v.

CITY OF SEATTLE, et al.,

Defendants

No. CO1-1081-Z

**DECLARATION OF HEATHER L.
CARR IN SUPPORT OF REPLY**

I, HEATHER L. CARR, certify and declare as follows:

1 I am one of the attorneys for the defendants in this matter. I make this
declaration on the basis of personal knowledge and am competent to testify to the
matters herein

2. Attached to and referenced in this declaration are true and correct copied
of documents generated or received and maintained by my office during the course of
representing the defendants in this matter.

a Attached as Exhibit 1 is a copy of the Municipal Court of Seattle
Docket, which establishes that Muio Tran was indeed charged with a crime –
assault – based on his acts on July 19, 1999. This disproves plaintiffs'
contention that Mr. Tran was "never charged ... with assaulting police officers or

DECLARATION OF HEATHER L. CARR (Cause
No. CO1-1081-Z) - 1

M:\CLIENTS\3019\22003\PLDCARR REPLY DECL DOC

STAFFORD FREY COOPER
Professional Corporation

ATTORNEYS
2500 RAINIER TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2621
TEL (206) 623-9900
FAX (206) 624-6885

ORIGINAL

52

1 with any other crimes" and Mr. Tran's testimony that he was "never charged with
2 any crime." See Response, p. 2; Aff. Of Plaintiff, Muo Tran, p. 1

3 b. Attached as Exhibit 2 is a copy of the Municipal Court of Seattle
4 Docket, which establishes that Kim Cuc Nguyen was charged with a crime –
5 assault – based on her acts on July 19, 1999. This disproves plaintiffs' contention
6 that Ms. Nguyen was "never charged ... with assaulting police officers or with any
7 other crimes" and Ms. Nguyen's testimony that she was "never charged with any
8 crime " See Response, p. 2; Aff. Of Plaintiff, Kim Cuc Nguyen, p. 1.

9 c. Attached as Exhibit 3 is a copy of portions of Mr. Tran's deposition
10 in the above-captioned matter.

11 d. Attached as Exhibit 4 is a copy of a June 10, 2002 letter I sent to
12 plaintiffs' attorney, Salah Kornas, asking for a copy of the videotape he submitted
13 as Exhibit A to his declaration in support of the Response.

14 e. Attached as Exhibit 5 is a copy of a June 11, 2002 letter from Mr.
15 Kornas.

16 3. Plaintiffs did not serve the defendants with a copy of the videotape they
17 attached as Exhibit A to Mr. Kornas' Declaration. When the defendants inquired into it,
18 plaintiffs assured them that the videotape was identical to the tape the plaintiffs
19 produced to the defendants pursuant to the defendants' discovery requests Id., Exs. 4
20 and 5. Defendants rely on this assurance in making their reply regarding the videotape.

21 4. Plaintiffs first filed a lawsuit regarding these claims on February 28, 2001
22 in state court. They voluntarily dismissed that action on May 31, 2001. Prior to
23 voluntarily dismissing their complaint, plaintiffs conducted no discovery. They then filed
their claim in federal court on July 31, 2001. Since filing this lawsuit in federal court,
plaintiffs have conducted no discovery. They have not served any written discovery and
they have not noted or taken a single deposition.

DECLARATION OF HEATHER L. CARR (Cause
No. CO1-1081-Z) - 2

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FAX (206) 624-6885

1 I CERTIFY under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.

3 DATED this 17th day of June, 2002, at Seattle,
4 Washington.

5 
6 HEATHER L. CARR
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DECLARATION OF HEATHER L. CARR (Cause
No. CO1-1081-Z) - 3

M:\CLIENTS\3019\22003\PLDCARR REPLY DECL DOC

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FAX (206) 624-6885

MUNICIPAL COURT OF SEATTLE
DOCKET
Case Status: CLSC

r295002

CITY OF SEATTLE, Plaintiff

** COMPRESSED **

Vs.

TRAN, MUOI , Defendant

Address: 5101 S ORCHARD ST
SEATTLE, WA 98118
764/7991 (Home)

Case No: 364158
File Loc: REC
Def No: 924935
Incident No: 99296991
Custody: OUT
Rltd Grp No: 132030
Co-Def's: 2

DOB: 12/10/1952 Age: 47 Sex: M Race: A Lang:
Ht: 510 Wt: 200 Eye: BRO Hair: BLK DOL: WA/TRAN*M*489RS

Prosecutor:

Defense Attorney: MITCHELL, BILLY
Interpreter:

206 621/9460

** Charges **

Chrg Doc No: Type: BK Viol Date: 07/20/1999 Filing Date: 07/21/1999

Chrg 1: ASSAULT
12A.06.010 Plea: Find: Status: DW
Disposition: DISMISSED WITHOUT PREJUDICE
Dismissal: MTG

BAIL Start: 07/21/1999 Due: 07/21/1999 End: 09/07/1999 PAID IN FULL
Amt: 950 Susp: Curr:

** Scheduled Hearings **

S	Date	Time	Dept	Type	Tape	Judge	Prosecutor	Date	Clk
C	07/22/1999	13:35	7	ICA				07/21/1999	RXA
H	08/06/1999	10:00	8	INTAKE		ENG, P	GREENE, R	07/22/1999	TMO

** Events **

Date	Description	
07/21/1999	CHARGE(S) FILED	RXA
07/21/1999	DEFENDANT BOOKED. BA# 199032809	RXA
07/21/1999	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 07/22/99 AT 1335 IN DEPT 7	RXA

Def. Name: TRAN, MUOI
09:37:18 As of 05/25/2000

Page 1

EXHIBIT 1

07/22/1999 INTAKE HEARING SCHEDULED FOR 08/06/99 AT 1000 IN DEPT 8 TMO

07/22/1999 IN-CUSTODY ARRAIGNMENT HRNG SCHDLD FOR 07/22/99 AT 1335 IN DEPT 7, CANCELLED! TMO

07/22/1999 MCIS UPDATED-HEARING NOTICE GENERATED TMO

07/22/1999 INTAKE HEARING NOTICE MAILED TO 5101 S ORCHARD ST SEATTLE, WA 98118 B

08/02/1999 RCV 073099 NOTICE OF APPEARANCE, REQ. BY DEFENDANT FOR DISCOVERY & INSPECTION FILED BY ATTY. BILLY S. MITCHELL WSBA #24718. SEND TO CASE FILE, TTH 080299 TTH

08/06/1999 DF: TRAN, MUOI (924935) PRESENT SSH
TAPE 66776 CLK 5935 ATTY. BILLY MITCHELL. DEFENSE MOTION TO CONTINUE/NO-PR/ DEFENSE MOTION TO DM W/O PREJUDICE/GRANTED.

08/06/1999 CHARGE # 1 12A060100 (ASSAULT) DISMISSED WITHOUT PREJUDICE MOTION GRANTED SSH

08/06/1999 IN: PHUNG, NOVA (216) PARTICIPATED SSH

09/07/1999 BAIL EXONERATED CCF

12/11/1999 CASE CLOSED, OBLIGATIONS CLOSED FOR 90 DAYS B

** Accounting Summary **

Post Date	Bail Amount	Type	Paid	Method	Status	CC	Posted By
07/21/1999	950.00	BAIL	950.00	CA	E	P	TRAN, T

Obl Type	Obl Amount	Cr to Date	Bal Due	Obl End St	Last Pay Reason	T:TP Date	P:Status
BAIL	950.00	950.00	.00	COM PAID		07/22/1999	N

MUNICIPAL COURT OF SEATTLE
DOCKET
Case Status: CLSC

r295002

CITY OF SEATTLE, Plaintiff

** COMPRESSED **

Vs.

NGUYEN, KIM CUC , Defendant

Address: 5101 S ORCHARD ST
SEATTLE, WA 98118
764/7196 (Home)

Case No: 364157
File Loc: REC
Def No: 954420
Incident No: 99296991
Custody: OUT
Rltd Grp No: 132030
Co-Def's: 2

DOB: 04/02/1954 Age: 46 Sex: F Race: A Lang:
Ht: Wt: Eye: Hair: DOL: /

Prosecutor:

Defense Attorney: MITCHELL, BILLY
Interpreter:

206 621/9460

** Charges **

Chrg Doc No: Type: BK Viol Date: 07/20/1999 Filing Date: 07/21/1999

Chrg 1: ASSAULT
12A.06.010 Plea: Find: Status: DW
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Dismissal: MTG

BAIL Start:07/21/1999 Due:07/21/1999 End:08/06/1999 PAID IN FULL
Amt:950 Susp: Curr:

** Scheduled Hearings **

S	Date	Time	Dept	Type	Tape	Judge	Prosecutor	Date	Clk
C	07/22/1999	9:05	7	ICA				07/21/1999	RXA
H	08/06/1999	10:00	8	INTAKE		ENG, P	GREENE, R	07/22/1999	TMO

** Events **

Date	Description	
07/21/1999	CHARGE(S) FILED	RXA
07/21/1999	DEFENDANT BOOKED. BA# 199032822	RXA
07/21/1999	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 07/22/99 AT 905 IN DEPT 7	RXA

Def. Name: NGUYEN, KIM CUC
09:37:05 As of 05/25/2000

Page 1

EXHIBIT 2

MAY-26-2000 FRI 09:08 AM SEATTLE MUNICIPAL COURT

FAX NO. 206 884 8705

P. 05

07/22/1999 INTAKE HEARING SCHEDULED FOR 08/06/99 AT 1000 IN DEPT 8 TMO

07/22/1999 IN-CUSTODY ARRAIGNMENT HRNG SCHDLD FOR 07/22/99 AT 905 IN DEPT 7, CANCELLED! TMO

07/22/1999 MCIS UPDATED-HEARING NOTICE GENERATED TMO

07/22/1999 INTAKE HEARING NOTICE MAILED TO 5101 S ORCHARD ST SEATTLE, WA 98118 B

08/02/1999 RCV 073099 NOTICE OF APPEARANCE, REQ. BY DEFENDANT FOR DISCOVERY & INSPECTION FILED BY ATTY. BILL S. MITCHELL, WSBA #24718. SEND TO CASE FILE --TTH 080299 TTH

08/06/1999 DF: NGUYEN, KIM CUC (954420) PRESENT SSH
TAPE 66776 LOC 1520 CLK LXS. ATTY. BILLY MITCHELL.
DEFENSE MOITON TO DM W/O PREJUDICE/NO PR-GRANTED.

08/06/1999 IN: PHUNG, NOVA (216) PARTICIPATED SSH

08/06/1999 CHARGE # 1 12A060100 (ASSAULT) DISMISSED WITHOUT PREJUDICE MOTION GRANTED SSH

08/06/1999 BAIL EXONERATED SSH

11/06/1999 CASE CLOSED, OBLIGATIONS CLOSED FOR 90 DAYS B

** Accounting Summary **

Post Date :	Bail Amount:	Type:	Paid:	Method:	Status:	DC:	Posted By
07/21/1999	950.00	BAIL	950.00	CA	E	P	TRAN, T

Obl Type:	Obl Amount:	Cr to: Date :	Sal: Due: St :	Obl End Reason :	Last Pay: Date :	T:TP P:Status
BAIL	950.00	950.00	.00 COM PAID		07/22/1999	N

U.S DISTRICT COURT

IN THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

MUIO TRAN, KIM-CUC NGUYEN,
NHU HUU TRAN, a minor child;
LOAN HUU TRAN, a minor child,

Plaintiffs,

vs.

CITY OF SEATTLE, et al.,

Defendants.

RECEIVED

APR 1 2 2002

STAFFORD FREY COOPER

No. CO1-1081-2

COPY

DEPOSITION UPON ORAL EXAMINATION OF

MUIO TRAN

9:08 a.m., March 27, 2002

1301 Fifth Avenue, Suite 2500

Seattle, Washington

Andrea Evans, CCR

Court Reporter Ref. #EV-AN-SA-*352PW

1 live with my brother, and then my children live with other
2 family member for about a week, after I was released from
3 the jail.

4 Q Where -- with what relative were your children
5 staying?

6 A Their cousin, the children's cousin.

7 Q Okay. And the name of your children's cousin?

8 A Tran Kim-Cuc.

9 Q Can you please spell that for the record?

10 A T-R-A-N, K-I-M, C-U-C.

11 Q And you and your wife stayed with Tran Tam; is
12 that correct?

13 A Yes. When I was released from the jail, I went
14 there and lived there for about a week.

15 Q Did your kids stay with Tran Kim-Cuc for a
16 week-and-a-half, before they moved home with you?

17 A About that time.

18 Q Going back to what you were talking about -- did
19 you have --

20 A Talking about the police chase me around the
21 house, by the time they beat me up, I was kind of dizzy.
22 And I lose my teeth, and then I don't remember exactly what
23 happened, at that moment.

24 Q Mr. Tran, earlier you testified that all you did
25 is cross the floor, and that you were pinned by the police

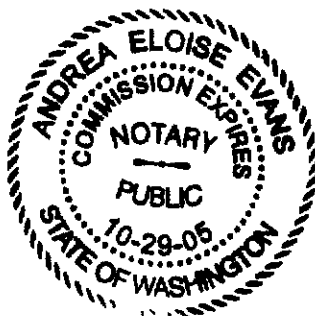
1 STATE OF WASHINGTON)

2)

3 County of King)

4
5
6
7 I, Andrea Evans, hereby certify that pursuant to the
8 Federal Rules of Civil Procedure, MUIO TRAN personally
9 appeared before me at the time and place set forth in the
10 caption herein; that at said time and place I reported in
11 stenotype all testimony adduced and other oral proceedings
12 had in the foregoing matter; that thereafter my notes were
13 reduced to typewriting under my direction; and the
14 foregoing transcript constitutes a full, true and correct
15 record of such testimony adduced and oral proceeding had
16 and of the whole thereof.

17 Witness my hand at Silverdale, Washington, this 8th
18 day of April, 2002.




ANDREA EVANS
CCR#EV-AN-SA*352PW

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Founded 1905

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Heather L. Carr

Email: hcarr@staffordfrey.com

June 10, 2002

STEPHEN P. LARSON
LISA M. MARCHESE
RAUL MARTINEZ
MARCUS B. NASH
‡ WILLIAM L. NBAL
DAVID J. ONSAGER
JOHN E.D. POWELL
KATHERINE M. STEELE
PHILLIP L. THOM
JENNIFER A. TRAN
KIM M. TRAN
** JAMES P. WAGNER
* JAMES T. YAND

OF COUNSEL

‡ RONALD S. BEMIS
JOHN G. COOPER
SHANNON STAFFORD

J. WILLIAM ASHBAUGH*
SCOTT D. BISSELL
MICHAEL C. BOLASINA
ANNE M. BRENNER
THERON A. BUCK
HEATHER L. CARR
TOBIN B. DALE
BLAKE EDWARD DIAS
A. RICHARD DYKSTRA**
SCOTT D. FLETCHER
THOMAS D. FREY
JEFF T. GUTIERREZ*
KENNETH HOBBS
JAMES KIRKHAM JOHNS*
* Admitted in NY
** Admitted in Alaska
‡ Admitted in Oregon
‡ Admitted in California

Via Facsimile; original by mail

Salah A. Kornas Esq.
Law Office of Salah A. Kornas
600 First Avenue, Suite 514
Seattle, WA 98104

Re: Tran v. City of Seattle

Dear Salah:

In your declaration in support of your opposition to the City's summary judgment motion, you state that you attached a videotape as Exhibit A. Our office did not receive a copy of that videotape when you served your opposition. Will you please deliver me a copy of that videotape by no later than Tuesday, June 11, 2002 at 4:30 p.m.?

Thank you.

Sincerely,

STAFFORD FREY COOPER



Heather L. Carr

EXHIBIT

4

LAW OFFICE OF
SALAH A. KORNAS

TEL: 206-621-9460

FAX: 206-621-9506

FACSIMILE TRANSMITTAL SHEET

TO: HEATHER CARR

FROM: SALAH A. KORNAS, ESQ.

COMPANY: STAFFORD FREY COOPER

DATE: June 11, 2002

FAX NUMBER: (206) 624-6885

TOTAL NO OF PAGES INCLUDING 2

PHONE NUMBER: (206) 623-9900

RE: Muio Tran☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS

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LAW OFFICE OF
SALAH A KORNAS

SALAH A KORNAS

PARALEGALS

TINA WHITFORD

June 11, 2002

Dear Heather,

I did not include copy of the videotape with the paper you were served.; it is the same tape you have and I gave you a copy of it some times ago. However, if you desire me to make an extra copy for you, I will be glad to do it.

The court has the same one you have. No surprises.

Thank you,


Salah A. Kornas